

Proposed Fiscal Narrative
Impact Certification and OSBM Fiscal Note

Proposed Rule Amendment of 10A NCAC 27G. 0504
Local Management Entity Client Rights Committees and Provider Client Rights Committees

Agency: DHHS/ Mental Health, Development Disabilities and Substance Abuse Services

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Authority: G.S. 122C-64; 143B-147

Impact: State government: Yes
Local government: Yes
Federal government: No
Substantial impact: No
Private impact: Yes

I. Overview

It is proposed that the rule be revised in order to:

- Define the duties and responsibilities of the Local Management Entity (LME) Client Rights Committee with regard to client rights.
- Establish a requirement for and define the duties and responsibilities of the provider agency Client Rights Committee with regard to client rights.
- Delineate the different functions and expectations of the Local Management Entity Client Rights Committee and Provider Client Rights Committee.
- Outline policies for membership and operating procedures for LME Client Rights Committee and Provider Client Rights Committee
- Establish guidelines for how the LME Client Rights Committee shall be required to function when the LME is the provider of service.
- Orientation and annual training requirements for LME Client Rights Committee and Provider Client Rights Committee members.
- Create requirements for completion of meeting minutes and reports from the LME Client Rights Committee and Provider Client Rights Committee.

II. Rationale of Proposed Rule:

N.C.G.S. §122C-64 was amended in 2009 and established a requirement that the Commission write rules to require each provider agency to establish Provider Client Rights Committees. This amendment fulfills that statutory charge by setting forth those requirements.

The proposed amendments to the rule are also necessary to delineate the changing role and functions of the LME in the current mental health, developmental disability and substance abuse services system and to outline procedures for the Local Management Entity Client

Rights Committees. The proposed rule amendment is also necessary to provide a structure for membership requirements and policy development.

III. Rulemaking Authority:

The Commission for Mental Health, Developmental Disabilities and Substance Abuse Services has the authority to adopt rules for the establishment, composition, and duties of Client Rights Committees (G.S. §122C-64).

IV. Analysis of Fiscal Impact:

Most of the proposed amendments within the rule do not have any fiscal impact as the rules are being changed to reflect new or revised procedural requirements for client rights committees. However, there are anticipated expenses associated with the development of Provider Client Rights Committees, as well as the annual reporting required by those provider and LME Client Rights Committees.

Costs Associated with the Proposed Amendment:

State Funds: Historically, the Division requested copies of client rights committee reports and reviewed them. This task, while part of the DMH/DD/SAS Clients Rights operation, was not codified in rule, so these costs have been included as “new” expenses to the state. It is estimated that annually it will take approximately 8-10 hours of staff time to review the reports from the LME Client Rights Committees and perform an analysis of the information. The task will be completed at an hourly expense rate of \$32.96 per hour (using midpoint salary for grade 72 plus fringe benefits of health insurance, retirement, and OASI-DI). Annualized costs will range between \$264 and \$330 for DMH/DD/SAS staff.

Local Funds: The Division anticipates minimal cost to Local Management Entities as they are currently required by rule to establish these committees. The Division estimates include costs the LME will incur related to the summarization of Provider Client Rights Committee reports to send to the state.

The Division conducted a survey of five LMEs to ascertain the fiscal impact that the proposed amendments will create. On the survey the Division asked about the following costs:

- Cost to staff the meetings (travel, meals, per diems);
- Staff time for attending the meetings (please note: this is not a new cost as it is already required in rule. The question was asked to determine make-up of committee and staff costs when they are replicated in the provider community);
- Cost to create the report; and
- Cost to minimize travel barriers.

The surveyed LMEs reported that the average staff salary ranged from \$19 to \$30 per hour and the number of staff hours for preparation and facilitation of the LME Client Rights Committee was from 8 hours to 12 hours. Preparation and facilitation of the committee costs to the LME could therefore range from \$152 to \$360. However, the current language within Rule 10A NCAC 27G .0504 requires these meetings be held and that the LME staff prepare

and facilitate the same, so this is not a new cost. Rather, this information is included for purposes of estimating costs to the providers.

The LMEs estimated the additional staff hours and costs for the completion of the LME Annual report, including the review of the provider Clients Rights Committee reports. The survey results reflected projected expenses from \$152 to \$675 per LME. This is the new cost required by the rule, as in the current rule, providers are not required to form Clients Rights Committees, nor submit any reports to the LMEs. The LMEs are currently required to prepare annual reports for their boards; however, they were not required to review and summarize provider reports, nor submit any reports to the Division.

The North Carolina Department of Health and Human Services is currently in the process of moving to a local managed care model in behavioral healthcare; this will reduce the number of LME Clients Rights Committees as LMEs pursue mergers. This merger will result in the formation of Managed Care Organizations (“MCO”). The Division expects there will be twelve LME/MCOs by the time of implementation of the amendments, with total annual reporting costs between approximately \$1,800 and \$8,100. (\$152 X 12 to \$675 X 12)

There were no additional expenses factored in for travel expenses and staff salaries to attend meetings, as the committee requirement and meeting interval has not changed from current rule requirement. All LMEs surveyed were already employing video or teleconferencing whenever possible so conversion to these technologies to reduce travel in the future is not anticipated to change from what is currently practiced. It may be the case, however, that some other LMEs would be impacted by the rule if they have not engaged in this practice. Furthermore, some LMEs that under the current rule were not training committee members on an annual basis would experience increased training costs under the new rule.

Private Funds: The fiscal impact to providers of services relates to the establishment of Provider Client Rights Committees. The current rule states that area authorities had the option of requiring the providers within its network to establish client rights committees. As the proposed amendment will now **require** all providers to establish or be a part of a client rights committee, the costs estimated to affect private funds are based upon all costs borne by the provider community. The proposed amended rule allows providers to join together to establish a combined committee, which would mitigate the cost of establishing and maintaining a committee. The Division anticipates that this will be especially helpful in lessening the financial impact on smaller providers.

The Division conducted a survey of providers across the state to ascertain the fiscal impact the requirement of forming or joining together to be part of a clients rights committee would have on providers. The Division reached out to a number of providers that were diverse in size and geographical location. Only 11 responded to the survey, and many declined to share costs with the Division.

From the survey it was found that all 11 providers were currently required by the contracting LMEs to operate such a committee pursuant to the current rule. Additionally, all of these committees were meeting quarterly, which will be required under the proposed rule. Providers were reluctant to answer questions regarding total cost of creating or participating in a client rights committee (only two of those providers surveyed gave a definitive cost estimate). In light of the paucity of survey data from providers, the Division used the staff time and cost estimation from the LME survey on client rights committees to determine fiscal impact on the provider community. It is unclear if this results in an over or underestimation

of provider costs, but given reluctance of providers responding to the survey, it was the best available data for use.

The calculation of the total number of Provider Client Rights Committees that will be formed was determined based upon the size of the provider agency. The Division believes that the providers that are serving a significant number of individuals monthly are likely to opt for including client rights committees as a part of their ordinary business operations. Providers that do not have a substantially large client base are likely to form a committee with other providers to limit their costs and staff time. As a proxy for “provider size”, the Division looked at all provider agencies and the number of mh/dd/sa consumers each unique business was serving. (Please note: these were unique individuals for a provider, not across the statewide provider network; thus if an individual was seen by two separate providers in the year, the individual was included in the consumer counts of both providers). The Division then classified providers into three categories: large, medium, and small, based on populations served. Large agencies served greater than 100 consumers; medium agencies served between 50-99; and small agencies served less than 50. It was estimated that medium-sized providers would likely join with other provider agencies to include committees comprised of at least 20 companies. Smaller providers would likely form committees with at least 50 other provider agencies. There currently are 300 providers seeing more than 100 consumers, 4,141 providers seeing between 50-99 consumers and 4,436 provider seeing less than 50 consumers in a fiscal year. The Division anticipates that, at most, the rule change will result in the formation of 300 large Provider Client Rights Committees, 207 medium sized committees, and 89 small sized committees, for a total of 596 committees statewide.

The Division estimates it will take approximately 4-6 hours of staff time per quarterly meeting for providers at the hourly staff cost of \$24.14 (as determined by the LME survey, which was used as a proxy). The Division estimates the total cost to providers would be approximately between \$230,000 and \$345,000 annually. [(596 committees X 24.14/hr wage X 4 hours X 4 annual meetings) to (596 committees X 24.14/hr wage X 6 hours X 4 annual meetings)]. This estimate include time spend on annual training of committee members. The cost for technologies to minimize travel barriers is not included in this estimate.

The Division believes that 596 provider Clients Rights Committees is a reasonable estimation for the interim period; however, the number of Provider Client Rights Committees may decrease as LMEs move into managed care and close their current provider networks. Once closed provider networks are managed by LME/MCOs, the Division anticipates that there will be around 15% fewer committees bringing the total to 507 committees. However, the effects of managed care will not be evident until 2014, as the transition of all LMEs to become LME/MCOs will end January 1, 2013.

Benefits of the Proposed Amendment:

Historically, Clients Rights Committees were seen as the “consumer conscience” within the mental health, developmental disabilities and substance abuse services system. These committees were created by statute in 1985, with the intention of protecting the rights of consumers. Since that time, these committees have served to ensure that consumers and their family members were offered opportunities to create a direct impact upon the services provided to them by constituting a committee of citizens, representing the community, that could work with local government to help ensure that services were provided in a safe and legally appropriate manner. The committees reviewed individual complaints, statistical data

regarding health and safety violations of NC laws and administrative rules and convened local forums for public comment regarding quality of care and the availability of services.

These committees were created to ensure citizen involvement in provision of mh/dd/sa services. The Division and DHHS encourage input by consumers and their family members whose insights are invaluable to making the system more accountable. Consumer satisfaction is an important indicator of the mh/dd/sa system performance. Consumer and family feedback is invaluable to our commitment to quality improvement so that services are being provided safely and appropriately. By amending the rule to require that all provider agencies, as well as LMEs, have these committees, the rule will expand the opportunities to ensure that citizen involvement will occur.

Typically, these committees review “incidents” that occurred (e.g., safety violations, privacy violations, treatment violations) that may lead including injury or harm to the consumers. The committees also review general complaints regarding administration issues in the provision of mh/dd/sa services. The Division anticipates that by expanding this rule to require all providers to participate, the committees will review trends violating consumer rights or causing harm. As such, provider agencies will be quicker to recognize issues that are causing injury or harm to their consumers and eliminate the same. This analysis of trends will result in prevention efforts, which will reduce incidents, and in doing so, save state, local and provider funds which would be spent investigating incidents that could otherwise occur. For example, the Division is aware of one provider who investigated a trend of slip and falls at its facility. The provider realized that the slip and falls were happening at the same place, and took proactive measures to fix the issues and prevent future falls. Since that time, there have been no more significant injuries at the facility. In the same manner, a cluster of complaints regarding a service will lead to a review of the service itself across agencies.

In addition, these public committees provide a forum for consumers and their family members to speak to others receiving services from the same provider and allow any complaints to be addressed a local, more individualized level. The Division has heard from consumers and family members who have stated they had an issue with the provider, but did not feel comfortable reporting it to the provider; instead, the individual wished to speak to other consumers or family members who are their friends and neighbors. These local level committees, which will be created by the direct service providers, will empower consumers and their family members to have a direct impact upon the provider agencies.

The amended rules will require the Local Management Entities to receive reports of the provider client rights meeting. This will allow the LMEs to learn about providers without incurring the cost associated with provider monitoring. If the LME learns of emerging issues at a provider, the LME can instead offer focused technical assistance to assist the provider in fixing the issue. In addition, the LMEs will be able to review these data for all providers, and perhaps find trends across multiple providers that it can address proactively and reduce or end further incidents.

It is difficult to quantify anticipated savings surrounding this amendment, as it would be speculative. However, it is very clear that public scrutiny at all levels leads to good government and better, more efficient provision of services. The Division is confident there will be many benefits that will ensure a more transparent system that encourages more involvement and participation by consumers and family members, but recognizes it is difficult to monetize the anticipated gains to the system.

Overall Anticipated Fiscal Impact:

Federal Impact: None

State Impact: Annual costs between \$264 and \$330.

Local Government Impact: Annual costs between \$1,800 and \$8,100.

Private Sector Impact: Annual costs between \$230,000 and \$345,000

Substantial Economic Impact: No

APPENDIX

10A NCAC 27G .0504 is proposed for amendment as follows:

**10A NCAC 27G .0504 ~~CLIENT RIGHTS COMMITTEE~~ LOCAL MANAGEMENT ENTITY
CLIENT RIGHTS COMMITTEES AND PROVIDER CLIENT RIGHTS
COMMITTEES**

- (a) ~~The area board shall bear ultimate responsibility for the assurance of client rights.~~
- (b) ~~Each area board shall establish at least one Client Rights Committee, and may require that the governing body of a contract agency also establish a Client Rights Committee. The area board shall also develop and implement policy which delineates:~~
- (1) ~~composition, size, and method of appointment of committee membership;~~
 - (2) ~~training and orientation of committee members;~~
 - (3) ~~frequency of meetings, which shall be at least quarterly;~~
 - (4) ~~rules of conduct for meetings and voting procedures to be followed;~~
 - (5) ~~procedures for monitoring the effectiveness of existing and proposed methods and procedures for protecting client rights;~~
 - (6) ~~requirements for routine reports to the area board regarding seclusion, restraint and isolation time out; and~~
 - (7) ~~other operating procedures.~~
- (c) ~~The area board established Client Rights Committee shall oversee, for area operated services and area contracted services, implementation of the following client rights protections:~~
- (1) ~~compliance with G.S. 122C, Article 3;~~
 - (2) ~~compliance with the provisions of 10A NCAC 27C, 27D, 27E, and 27F governing the protection of client rights, and 10A NCAC 26B governing confidentiality;~~
 - (3) ~~establishment of a review procedure for any of the following which may be brought by a client, client advocate, parent, legally responsible person, staff or others:~~
 - (A) ~~client grievances;~~
 - (B) ~~alleged violations of the rights of individuals or groups, including cases of alleged abuse, neglect or exploitation;~~
 - (C) ~~concerns regarding the use of restrictive procedures; or~~
 - (D) ~~failure to provide needed services that are available in the area program.~~
- (d) ~~Nothing herein stated shall be interpreted to preclude or usurp the authority of a county Department of Social Services to conduct an investigation of abuse, neglect, or exploitation or the authority of the Governor's Advocacy Council for Persons with Disabilities to conduct investigations regarding alleged violations of client rights.~~

~~(e) If the area board requires a contract agency to establish a Client Rights Committee, that Committee shall carry out the provisions of this Rule for the contract agency.~~

~~(f) Each Client Rights Committee shall be composed of a majority of non area board members, with a reasonable effort made to have all applicable disabilities represented, with consumer and family member representation. Staff who serve on the committee shall not be voting members.~~

~~(g) The Client Rights Committee shall maintain minutes of its meetings and shall file at least an annual report of its activities with the area board. Clients shall not be identified by name in minutes or in written or oral reports.~~

~~(h) The area board Client Rights Committee shall review grievances regarding incidents which occur within a contract agency after the governing body of the agency has reviewed the incident and has had opportunity to take action. Incidents of actual or alleged Client Rights violations, the facts of the incident, and the action, if any, made by the contract agency shall be reported to the area director within 30 days of the initial report of the incident, and to the area board within 90 days of the initial report of the incident.~~

(a) The Local Management Entity (LME) governing board shall establish at least one clients right committee in its catchment area and require that provider governing bodies establish a client rights committee according to paragraph (d) in this rule. The LME client rights committee shall be responsible for client rights protections in accordance with the LME's role as manager of public mental health, developmental disabilities, and substance abuse (mh/dd/sa) services. The provider client rights committee shall be responsible for client rights protections in accordance with the provider's role as provider of services.

(b) The LME governing board shall ratify policies governing client rights committee membership and operating procedures including:

- (1) each LME committee shall be comprised of a majority of non-board members, with disability representation that reflects the clients served and at least 50% of the membership shall consist of individuals who are either consumers or family members;
- (2) staff support to assist the committee to meet the requirements of the provisions of this rule;
- (3) minimize travel barriers for consumers and families to enhance participation;
- (4) LME staff members who serve on the committee shall not be voting members;
- (5) minimum and maximum committee size, composition, terms of office, quorum necessary to conduct business, method for open nomination process and method of appointment of committee membership including assurance of representation from each county;
- (6) procedure for removal for good cause;
- (7) training and orientation of committee members at least annually;
- (8) attendance requirements;
- (9) frequency of meetings which shall be at least quarterly;

- (10) location of meetings which shall be in North Carolina;
- (11) rules of conduct for meetings and voting procedures to be followed;
- (12) assurance against any conflicts of interest;
- (13) compliance with confidentiality rules according to 10A NCAC 26B;
- (14) the collection of information and the submission of reports requested by the LME, its governing board or the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS) regarding the rights of consumers receiving public services; and
- (15) other committee operating procedures required to protect clients' rights and to assure compliance with this rule.

(c) The duties of the LME client rights committee shall be to work with the governing board to oversee, for individuals receiving mh/dd/sa services in its catchment area, client rights protections including:

- (1) assurance that the requirements of this rule and other client rights protections are reviewed through routine provider monitoring in accordance with 10A NCAC 27G .0600 - .0610;
- (2) compliance with G.S. 122C, Article 3 regarding clients' rights and advance instruction;
- (3) compliance with the protection of clients' rights in the community according to 10A NCAC 27C, 27D, 27E and 27F;
- (4) assurance of confidentiality according to 10A NCAC 26B;
- (5) review of aggregate and descriptive complaint and appeal data in accordance with 10A NCAC 27G .7001 - .7004 and 10A NCAC 27I .0600 - .0609, respectively;
- (6) apprise the LME governing board or a designated officer, at any time during the year, of issues that relate to the assurance of clients' rights; and
- (7) authorize employees to collect and analyze information that the committee or the LME governing board require to fulfill the requirements of this rule.

(d) Provider governing bodies shall establish client rights committees through one of the options below:

- (1) a provider shall form its own committee(s); or
- (2) multiple providers may enter into written agreements to form a committee(s) to meet the requirements of this rule.

(e) The provider governing body shall adopt policies governing committee membership and operating procedures including:

- (1) each committee shall be comprised of a majority of non-board members, with disability representation that reflects the clients served and at least 50% of the membership shall consist of individuals who are either consumers or family members;
- (2) minimum and maximum committee size, composition, terms of office, quorum necessary to conduct business, method for open nomination process and method of appointment of committee membership;

- (3) procedure for removal for good cause; and
- (4) operation procedures of the committee including:
 - (A) attendance requirements;
 - (B) frequency of meetings at least quarterly;
 - (C) location of meetings which shall be in North Carolina;
 - (D) rules of conduct for meetings and voting procedures;
 - (E) training and orientation of committee members at least annually;
 - (F) assurance against any conflicts of interest;
 - (G) compliance with confidentiality rules according to 10A NCAC 26B;
 - (H) staff support to the committee required to meet the provisions of this rule;
 - (I) minimize travel barriers for consumers and families to enhance participation;
and
 - (J) other committee operating procedures required to protect client rights and to assure compliance with this rule.

(f) The provider committee shall assure clients' rights protections including the following:

- (1) compliance with applicable requirements of this rule;
- (2) compliance with G.S. 122C, Article 3 regarding clients' rights and advance instruction;
- (3) compliance with incident reporting and other applicable clients' rights provisions of 10A NCAC 27G .0600 - .0610;
- (4) compliance with the protection of clients' rights in the community enumerated in 10A NCAC 27C, 27D, 27E and 27F;
- (5) review of clients' rights data including incidents, complaints, appeals and investigations;
and
- (6) apprise the governing body or a designated officer, at any time during the year, of issues that relate to the assurance of clients' rights.

(g) If an LME provides a service or services, the LME client rights committee shall follow the requirements of the provider client rights committee for the LME service or services.

(h) The LME client rights committee and the provider(s) client rights committee shall work with state and local agencies to protect clients' rights for individuals receiving md/dd/sa services and nothing herein stated shall be interpreted to preclude the legal authority of local and state agencies including:

- (1) a county Department of Social Services to conduct an investigation of abuse, neglect or exploitation;
- (2) North Carolina's protection and advocacy system to conduct investigations regarding alleged violations of clients' rights; and
- (3) law enforcement agencies' investigations of criminal allegations that pertain to rights violations.

(i) The LME client rights committee and the provider(s) client rights committee shall document initial orientation of committee members and annual training thereafter on topics to fulfill their duties as described in this rule including:

- (1) applicable North Carolina statutes and rules codified in the North Carolina Administrative Code;
- (2) the organization of the North Carolina public system for mental health, developmental disabilities and substance abuse services;
- (3) the duties of the local and state consumer family advisory committee according to G.S. 122C-170 and 171, respectively;
- (4) principles of advocacy, self-determination and recovery; and
- (5) customer service strategies.

(j) A LME client rights committee and a provider(s) client rights committee shall maintain meeting minutes. Clients shall not be identified by name in minutes or in written or oral reports.

(k) A provider(s) client rights committee shall complete an annual report and send it to the LME(s) with whom the provider has a service agreement(s).

(l) A LME client rights committee shall complete an annual report and send it to the DMH/DD/SAS which shall publish an annual analysis of the LME committee reports.

(m) The reports noted in paragraph (k) and (l) of this rule shall be submitted on forms provided by the DMH/DD/SAS.

*History Note: Authority G.S. 122C-64; 143B-147; 122C-64;
Eff. May 1, 1996;
Amended Eff_____.*